IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

WP(C).No. 15166 of 2007(E)

PETITIONER:

C.N.HAMZAKOYA. VICE CHAIRPERSON,
KAIPENI VILLAGE(DWEEP) PANCHAYATH,
KALPENI ISLAND, LAKSHADWEEP.

BY ADV. SRI.S.RAMESH BABU

RESPONDENTS:

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1. THE ADMINISTRATOR,
KAVARTTI ISLAND, LAKSHADWEEP.

2. DIRECTOR OF PANCHAYATHS & RD.,
KAVARATTI ISLAND, LAKSHADWEEP.

3. THE EXECUTIVE OFFICER,
VILLAGE (DWEEP)PANCHAYATH,
KALPENI ISLAND.

4. THE CHAIRPERSON, KALPENI VILLAGE(DWEEP)
PANCHAYATH, KALPENI ISLAND, LAKSHADWEEP.

5. K.SHEEMABI, FORMER MEMBER,
VILLAGE(DWEEP) PANCHAYATH,
KALPENI ISLAND.

6. U.P.ASHRAF, FORMER MEMBER,
VILLAGE(DWEEP)PANCHAYATH, KALPENI ISLAND.

7. K.K.SAJJID KHAN, FORMER MEMBER,
VILLAGE(DWEEP)PANCHAYATH, KALPENI ISLAND.

8. E.P.ATTAKOYA, FORMER MEMBER,
VILLAGE (DWEEP) PANCHAYATH, KALPENI VILLAGE.

9. K.AKBER, FORMER MEMBER,
VILLAGE(DWEEP)PANCHAYATH, KALPENI ISLAND.

10. SMT.GAZEEMA, FORMER MEMBER,
VILLAGE(DWEEP) PANCHAYATH, KALPENI ISLAND.

BY ADV. SRI.S.RADHAKRISHNAN,SC,LAKSHADWEEP ADMN
ADV.SRI. T.M.KOCHUNNI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/08/2007 ALONG WITH W.P.C.NO.18480/07, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.C.NO.15166/07

PETITIONER'S EXHIBITS

EXT.P1(A)	TRUE COPY OF THE LETTER DTD. 17-1-07
EXT.P1(B)	TRUE COPY OF THE LETTER DTD. 17-1-07
EXT.P1(C)	TRUE COPY OF THE LETTER DTD. 17-1-07
EXT.P1(D)	TRUE COPY OF THE LETTER DTD. 17-1-07
EXT.P1(E)	TRUE COPY OF THE LETTER DTD. 31-1-07
EXT.P2	TRUE COPY OF THE RELEVANT PORTION OF THE LAKSHADWEEP PANCHAYAT RULES AND REGULATIONS 1994
EXT.P3(A)	TRUE COPY OF LETTER DTD. 16-02-06
EXT.P3(B)	TRUE COPY OF THE LETTER DTD. 16-02-06
EXT.P3(C)	TRUE COPY OF LETTER DTD. 16-02-07
EXT.P3(D)	TRUE COPY OF LETTER DTD. 16-02-07
EXT.P3(E)	TRUE COPY OF LETTER DTD. 16-02-07
EXT.P4	TRUE COPY OF THE LETTER DTD. 1-03-07
EXT.P5	TRUE COPY OF THE MEETING HELD ON 12-03-2007
EXT.P6	TRUE COPY OF THE MESSAGE DTD. 14-03-2007
EXT.P7	TRUE COPY OF THE SAID COMMUNICATION DTD. NIL
EXT.P8	TRUE COPY OF THE COMMUNICATION DTD. 11-04-2007
EXT.P9	TRUE COPY OF THE COMMUNICATION DTD. 25-04-2007

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

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W.P.(C).NOs.15166 & 18480 OF 2007

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Dated this the 22nd day of August, 2007

JUDGMENT

These writ petitions being connected are disposed of through this common judgment.

W.P.(C)No.18480/07

W.P.(C)No.18480/07 is filed by four residents of Kalpeni Island. They were elected as members of Village (Dweep) Panchayat, Kalpeni. There are 8 elected members. 4th and 5th respondents are also members and the 5th respondent is the Vice Chairman. According to the petitioners due to corrupt activities of the 5th respondent, they decided to resign and they addressed Exts.P1(a) to P1(d) resignation letters dated 17-01-2007. It was received by the 4th respondent who is the Chairperson on 31/01/2007. The Chairperson proceeded to intimate the petitioners that the resignation of the petitioners cannot be accepted since the presence and co-operation of the petitioners as a member of Panchayat are absolutely necessary for effective

implementation of various schemes of Panchayat (Ext.P2.). Petitioners submitted letters to the 4th respondent withdrawing the resignation submitted by them. Exts.P3(a) to P3(D) are letters of withdrawal submitted on 16/02/2007 stating that it will be with effect from 08/02/2007. They were received on 17/02/2007 by the 4th respondent. A no confidence motion came to be passed in which the petitioners also participated as members and by which the 5th respondent was removed from the post of Deputy Chairperson. Thereafter the first petitioner was elected as Vice-Chairperson and he is continuing, it is contended. While so, the 5th respondent filed W.P.(C)No.15166/07 praying to stay Ext.P5 order. Notice was issued in the said writ petition. Second respondent issued a fax message dated 18/05/2007 to the petitioners as well as the third respondent- the Executive Officer intimating that the first respondent has ordered enquiry into the resignations by the petitioners and requested the petitioners to reach Kavarathi by the next conveyance (Ext.P6). Petitioners sent Ext.P7 request for arranging conveyance from Kalpeni to Kavarathi. It is the case of the petitioners that no arrangements were made and they sent Exts.P8 and P9

messages. Ext.P10 is the order by which the Administrator has found that the petitioners had resigned and it was received by the Chairperson on 31/01/2007 and thereafter in terms of Regulation 28(4) the resignation took effect and the withdrawal of the resignation was only on 16/02/2007 and it was beyond time. Petitioners challenge Ext.P10 and seek appropriate incidental reliefs.

W.P.(C)No.15166/07

The prayer in W.P.(C).No.15166/07 filed by the 5th respondent in the other writ petition is to declare that respondents 5 to 10 have ceased to be members of the Kalpeni (Dweep) Panchayat in terms of the Regulation 28(4) and Regulation 21 of the Lakshadweep Panchayat Rules and Regulations 1994. There is a further prayer to declare that the petitioner continues to be Vice-Chairperson of the Kalpeni (Dweep) Panchayat during his period of office notwithstanding the no confidence motion passed by the respondents 5 to 9. He also seeks to quash Ext.P9. He seeks a direction not to recognise respondents 5 to 9 as members o the Panchayat for any purpose from 16/02/2007. He also seeks anxilliary reliefs.

2. Counter affidavit is filed in W.P.(C)No.18480/07. Therein it is interalia stated as follows:

> " As regards the complaint regarding the denial of an opportunity to the petitioners, it is respectfully submitted that there was a conveyance from Kalpeni to Kavartti on 03-06-2007. The Executive Officer and one of the former members viz.Smt. Sheemabi had presented themselves and given their depositions. All the concerned were asked to present themselves with relevant records to prove their statement of defence as per Exhibit P6, Message F. No.8/2/2007-DOP&RD dated 18th May 2007. Nobody except Smt.Sheemabi and the Executive Officer were present inspite of having sufficient time and conveyance. The IInd respondent has conducted an enquiry on 28-05-2007 and 6-6-2007 and has submitted a report to the 1st respondent on 8-6-2007. The true copy of the said report is also produced herewith and marked as Ext.R2(a).

3. I heard learned counsel for the parties. Learned counsel for the petitioners in W.P.(C)No.18480/07 Sri.T.M.Kochunni would submit that even though the petitioners have tendered their resignation and it was received by the

Chairperson on 31/01/2007, the Chairperson refused to accept the same. According to him under Regulation 25 it must be treated that the Chairperson has power. He would further point out Sub Regulation 5 of Regulation 28 to contend that the dispute relating to the resignation of the petitioners was decided contrary to the said provision as Ext.P10 is beyond 30 days. He further contends that the matter was not referred by the Chairperson to the Administrator and there must be a reference by the Chairperson to the Administrator under Sub Regulation 5 of Regulation 28. He would finally contend that petitioners were not afforded an opportunity to present their case. A decision is taken as Ext.P10 by which their interests are adversely affected without hearing them, it is submitted.

4. Per contra, learned counsel appearing on behalf of the Administrator would contend that there is no merit in W.P.(C) No.18480/07. He would submit that it is a clear case whether the withdrawal took effect on 14/02/2007. The withdrawal was effected only on 16/02/2006 and too with effect from 08/02/2007, for which there is no warrant. The 5th respondent has submitted his complaint on 01/03/2007 and therefore there is

no merit in the complaint that dispute was entertained beyond 30 days as provided in Regulation 28, he submits.

5. In order to appreciate the contentions of the petitioners it is necessary to refer to Regulation 28. Regulation 28 is extracted hereunder:

> " (1) Any member may resign his office by giving notice in writing to that effect to the Chairperson and to the President-cum-Chief Counsellor, as the case may be, and such resignation shall take effect as provided under sub-section (4)
>
> (2) The Vice-Chairperson and Vice-President-cum-Counsellor may resign his office by giving notice in writing to the Chairperson and President-cum-Chief Counsellor, as the case may be, and such resignation shall take effect as provided under sub-section (4).
>
> (3) The Chairpeson and President-cum-Chief Counsellor may resign his office by giving notice in writing to the prescribed authority and the resignation shall take effect as provided under sub-section (4).
>
> (4) Every resignation under sub-section (1), sub-section(2) and sub-section (3) shall

take effect on the expiry of the period of fifteen days from the date of its receipt by the Chairperson, President-cum-Chief Counsellor or the prescribed authority, as the case may be, unless within this period of fifteen days he withdraws such resignation by writing under his hand addressed to the Chairperson, President-cum-Chief Counsellor or the prescribed authority, as the case may be.

(5) If any dispute regarding any resignation arises, it shall be referred for decision to the Administrator and his decision shall be final:

provided that no such dispute shall be entertained after the expiry of a period of thirty days from the date on which the resignation takes effect."

6. Admittedly the petitioners tendered their resignation vide Exts.P1(a) to P1(d) on 17/01/2007. There is no dispute that the resignations were received by the 4th respondent on 31/01/2007. The resignation of a member under Regulation 28 (1) will take effect under Regulation 28(4) upon expiry of 15 days from the date of receipt of the same by the Chairperson. I am not impressed by the contention based on Regulation 25.

Regulation 25 which is pressed by the learned counsel for the petitioner is as follows:

> " The executive powers of the Village (Dweep) Panchayat and District Panchayat under this Regulation and the responsibility for the due fulfillment of duties imposed on that Panchayat, under the Regulation and for carrying out the resolution of such Panchayat shall vest in the Chairperson and the President-cum-Chief Counsellor, as the case may be."

7. The said Regulation only speaks about the executive powers of the Panchayat and District Panchayat and the powers being vested with the Chairperson and the President-cum-Chief Counsellor as the case may be. Regulation 28 appears after Regulation 25. Regulation 28 infact would appear to be an exhaustive code in relation to the question of resignation. In view of the unambiguous words of Sub Regulation 4, there cannot be the shadow of a doubt that the statute clearly provides for the time when the resignation take effect. In other words there is absolutely no power vested in anybody leave alone the Chairperson to refuse to accept the resignation. The refusal of

the Chairperson after he receives the letters of resignation is irrelevant and will not for a moment advance the case of the petitioners. This is as he cannot alter the dictate of the statute which is contained in sub rule 4 of Regulation 28. Thus the argument of the petitioner based on Regulation 25 has to necessarily fail and I repel it.

8. It is not in dispute that petitioners addressed letters withdrawing the resignation only on 16/02/2007. It is sated therein that it will take effect from 08/02/2007. The statute does not contemplate any power to indicate that it will take effect from the day in the past. Further the wording of sub regulation 4 makes it very clear that the expiry of a period of 15 days from the date of receipt of the resignation by the Chairperson is fatal to the person who has tendered his resignation unless he withdraws it in the meantime. In other words, the right given to the member resigning is to withdraw the resignation in writing addressed to the Chairperson within a period of 15 days. Any other interpretation would make a mockery of the Rule as otherwise much after the expiry of the period he can address letter withdrawing it retrospectively within a point of time falling

the fifteen days period. I do not think that such an interpretation can be accepted. Therefore the position that emerges is the withdrawal made by the petitioners is ineffective to offset the coming into force of the resignation on 14/02/2007. Even assuming that the resignation came into effect on 15/02/2007, petitioners having withdrawn the resignation only on 16/02/2007 and infact the resignations were received on 17/02/2007, clearly the resignation took effect.

9. Learned counsel for the petitioners further contended that there is no power to pass Ext.P10 in the light of sub regulation 5 of Regulation 28. Sub Regulation 5 reads as follows:

> " (5) If any dispute regarding any resignation arises, it shall be referred for decision to the Administrator and his decision shall be final:
>
> provided that no such dispute shall be entertained after the expiry of a period of thirty days from the date on which the resignation takes effect."

10. The period of 30 days as contemplated therein expired on 14/03/2007. Ext.P10 is dated 08/06/2007. He would therefore contend that the decision is taken beyond the period of

thirty days. I am afraid that this contention is without any merit. In the first place there is no dispute that the 5th respondent addressed communication to the Administrator on 01/03/2007 which is produced as Ext.P4 in W.P.(C)No.15166/07. The provision in question only taboos the entertaining of a dispute beyond 30 days. The word " entertain" in this context cannot have the meaning finally decided. The word 'entertain' with its very shades of meaning can only bear the meaning in the context of this regulation as receiving for consideration. The Apex Court in the decision reported in **Lala Ram v. Hari Ram** (1969 (3) SCC 173) held in the context of Section 417 of the Criminal Procedure Code as follows:

> "The learned counsel also suggests that the work "entertain" which occurs in Section 417 (4) means "to deal with or hear" and in this connection he relies on the judgment of this court in Lakshmi Rattam Engineering Works v. Asst. Commissioner Sales Tax. It seems to us that in this context "entertain" means "file or received by the High Court" and it has no reference to the actual hearing of the application for leave to appeal; otherwise the result would be that in many cases applications for leave to appeal would be

barred because the applications have not been put up for hearing before the High Court within 60 days of the order of acquittal."

11. I would think that in the setting in which the word 'entertain' occurs, it should bear the meaning that the dispute should be raised by filing complaint within 30 days. It is submitted on behalf of the Administrator that the complaint was received on 2.3.2007. It is specifically stated in the counter affidavit of respondents 1 to 3 that the Administrator has conducted an inquiry into this, since the 5th respondent has submitted a complaint and has caused a lawyer notice to be sent on his behalf to the Administrator within 30 days of the dispute. This is not seen denied. Therefore the complaint of the fifth respondent was filed within 30 days.

12. In view of these facts, I would think that the case of the petitioners may not hold good. Principle of natural justice of course should be observed if there is some semblance of a matter for decision. If the whole exercise is to be a futile one, the courts would not order the observance of an empty formality. In view of the undisputed facts of this case I have found that the

resignations have in fact taken effect and there is no power with the Chair Person to accept or reject the same and her rejection is immaterial. I find little merit in the contention of the petitioner.

W.P.(C) 18480 of 2007 is dismissed. So far as the order passed by the Administrator is upheld, there is no need to pass further orders in W.P.(C)No. 15166/07.

(K.M.JOSEPH, JUDGE)

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